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SUPREME COURT OF THE UNITED STATES

October Term ___

No. ____

RUSSELL HARDY, Sr., AND MILDRED M. HARDY,

Petitioners,

v.

HOUSING MANAGEMENT COMPANY AND THE CITY OF GAITHERSBURG,

Respondents

PETITION FOR CERTIORARI TO

THE COURT OF APPEALS OF MARYLAND

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Atty for Petitioners

QUESTIONS PRESENTED

Whether the rights, privileges or immunities of Petitioners as citizens of the United States have been abridged in violation of the XIV Amendment of the Constitution; whether they have been deprived of liberty or property without due process of law in violation of that Amendment; whether they have been denied the equal protection of the law in violation of that Amendment; and whether the Circuit Court for Montgomery County, Maryland, and the Court of Appeals of Maryland have departed from the lawful and Constitutional course of proceedings in this case; in the following terms terms and conditions:

Where a rent control administrative commission rejected a complaint of Petitioners for relief from prohibited increases of rent without taking action required by law, on a legal question of jurisdiction which it had no authority to make; where the Circuit Court dismissed Petitioners' suit on the ground that the rent increases were not unlawful because Gaithersburg had authority to

impose rent control "if it wishes to" as a rule of law and had not done so; where the Respondent landlord caused officials of the government of Gaithersburg to intervene in this case and align the City with the landlords, contrary to the charter and the interest of the people of the City and its fifteen thousand residential renters; where the Court of Appeals of Maryland affirmed the judgment of the Circuit Court on the ground that Gaithersburg derived the charter power for rent control from the non-denial thereof by the Constitution, the statutes and its own charter; and where Petitioners and fifteen thousand other residential renters of Gaithersburg were paying landlords prohibited rent increases in the amount of two million dollars a year, from which they were entitled to be protected by the County Landlord-Tenant Relations Act.

THE PARTIES

The parties in the Court of Appeals, whose judgment is sought to be reversed are: Russell Hardy, Sr., and Mildred M. Hardy,

Petitioners; and Housing Management Company and City of Gaithersburg, Respondents. Housing Management Company is an unincorporated association or joint-stock company, which, under Article 23, section 138, of the Annotated Code of Maryland, may be sued in that name. The identityof the associates or real parties in interest is unknown to Petitioners.

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OPINIONS IN THE COURTS BELOW

The opinion of the Circuit Court is at Appendix page 3) Opinions in this Court are not published.

The opinion of the Court of Appeals is at Appendix page 5) It was rendered on May 7, 1982, 293 Md. 395, 444 A 2d 425.

GROUNDS OF JURISDICTION

The case is a civil action for damages caused by imposition and receipt of prohibited residential rent increases and related unlawful acts, in the Circuit Court for Montgomery County, Maryland, provided for by Chapter 29, Montgomery County Code, section 29-46.

The date of the entry of the judgment sought to be reviewed is May 7, 1982. The date of an order (in the form of a letter of the Clerk of the Court of Appeals of Maryland), denying a motion of Petitioners for reconsideration (rehearing), is June 4, 1982.

The statutory provision for jurisdiction of the appeal to this Court is section 1257, Title 28, Judiciary and Judicial Procedure, U. S. C. A.

CONSTITUTIONAL ETC PROVISIONS

The Constitutional and statutory provisions involved being lengthy, their pertinent text are set forth in the Appendix at pages 1-2.

Amendment XIV, Constitution of U.S.

Article XI-A, sec. 3, Constitution of Maryland, Annotated Code Md.
Article XI-E, sec. 3, Constitution of Maryland, ibid.
Article XI-E, sec. 6, Constitution of Md. ibid
Fair Landlord-Tenant Relations Act, Chp. 29, sec. 29-75, Montgomery Code 1972.

STATEMENT OF THE CASE

The Montgomery County Fair Landlord-Tenant Relations Act prohibited landlords of residential dwellings in the county from increasing the rent thereof and doing other related unlawful acts. (Montgomery County Code, 1972, 1977 Repl. Vol., 1980 Cum. Supp., § 29-31 et seq.) Violations were made misdemeanors subject to a small fine. Actions by tenants for awards of damages by an Executive Director and a Commission created by the Act, and by the County Circuit Courts, were authorized. The Act was intended as a

continuation in Montgomery County of the Federal rent control law. (Economic Stabilization Act of 1970, Rent Stabilization Regulations.)

Petitioners were tenants of an apartment in Gaithersburg with about five hundred similiarly situated tenants, on leases from Housing Management Company. In proceedings before the Director and Commission, and in an action in the Circuit Court, Petitioners alleged that Housing Management Company had violated the Act by making and collecting many increases of their rent, and doing many related prohibited acts.

Gaithersburg, founded in 1722, is one of the earliest incorporated places of the State. Located approximately in the center of the county, in 1976 it had a growing population of more than twenty-six thousand, of which the residential renter population was about fifteen thousand. It has the largest residential renting population of any incorporated community in the county, which has a population of 590,000. It is the seat of large and important installations of the

Atomic Energy Commission, which employs large numbers of the residential renters of the city. It is also the home of many District of Columbia government officials and employees who commute each day between their work and the town.

In Montgomery County at large and Gaithersburg in particular, residential renting conditions have been increasingly stringent. As a basis for the Landlord-Tenant Relations Act, the County Council made and enacted legislative findings, in part as follows: That a public emergency existed in the housing of the people of the county, caused by a shortage of residential rental units throughout the county, unequal bargaining power between landlords and tenants, excessive and exorbitant rent increases, and unjust, unreasonable and oppressive rental terms, and profiteering, speculative and disruptive practices of landlords and others, detrimental to the residential renters of the county; resulting in great hardship and impairment of the health, safety and welfare of its rental population. (Montgomery County Code, supra, § 29-2, 29-47) No findings were made that these condi-

tions did not exist in equal or greater intensity in Gaithersburg. Indeed it was factually and judicially notorious that these conditions, actions and effects, were merely parts of the same nationwide economic calamity and famine existing with intensity in the individual States, their counties and incorporated towns. The purpose and intent of the Montgomery County Act is that wherever the calamitous conditilns exist in the county, the law of the Act follows and is applicable.

By the Act the Director and the nine Commissioners were charged with the duty of its enforcement, among other things, by receiving and acting on complaints of violations, investigating complaints, making findings of facts, decisions and awards of money damages against guilty landlords. (Montgomery County Code, supra, §§ 29-10, 29-34; 29-38)

On November 24, 1979, Petitioners filed with them a complaint alleging that Respondent Housing Management Company had made unlawful increases in rent, given unlawful notices, received rent increases, and made

threats of retaliatory action. They requested that an investigation and determination be made that the violations had occurred, and an award of money damages be made.

The complaint was quickly rejected on December 5, 1979; again on December 19, 1979; and finally on June 10, 1980, without any intervening proceedings required by the Act; and with the statements that "this Office is unable to assist you"; "the Office has been specifically prohibited from enforcing the Landlord-Tenant Relations Law, and "the Commission felt it has no jurisdiction over tenancies in the City limits of Gaithersburg". The Commission was referring to a clause of section 3 of Article XI-A of the Constitution of Maryland stating

> that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto . . . (Appendix, p. 1)

None of Petitioners allegations was disput-

ed, no investigation or findings of fact was made, and none of the other requirements of the Act had been complied with. The rejection was based solely on a matter of law, a judicial decision, which the Director and the Commission had no authority, competency or jurisdiction to consider or make. No face-to-face or public hearing or appearance of the Petitioners as required by the Act was had, and no communication or contact between them and the deciding and adjudicating administrators occurred except by mail.

In any case in which a Maryland incorporated town has charter legislative powers for any law also covered by a county law, and for that reason the county law is unenforceable in the town, thepeople of the town lose the equal protection of that law by the county. Also with each such case, more and more of the natural integration of the counties and towns is worn away.

By its charter, Gaithersburg has no legislative powers for enactment of Landlord-Tenant relations law, i.e., "a law on the same sub-

ject as covered by the various articles and sections of" the county landlord-tenant Act. (sec. 29-75)

Article XI-E of the Constitution of Maryland, in 1954 granted to Gaithersburg the power to amend or repeal its existing charter and adopt a new one with powers of its own choosing. The Article reads as follows:

> Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article. (Appendix, p 2)

Taking advantage of this eight, the people of the city, on Febraury 16, 1970, repealed their existing charter and adopted a comprehensive and completely new one. A copy of the document obtained from the City was furnished to the Executive Director. Demonstrably, it contains no language, sentence, phrase, clause or other matter covering, duplicating, or resembling any part of the County Act. Nevertheless, no part of that Act has ever

been administered or enforced in Gaithersburg by the County, the Executive Director, the Montgomery County Commission, or any other Maryland governmental agency.

As a result, for a long period, Respondent Housing Management Company and the landlords, rent profiteers and inflators and speculators reproved in the legislative findings of the County Act, have copiously reaped prohibited rents from tenants in Gaithersburg. An estimate based on the prohibited increases imposed on Petitioners and their five hundred neighbor tenants by Respondent Housing Management Company and the other residential landlords of Gaithersburg shows that they have collected from the fifteen thousand Gaithersburg renters about sixty million dollars for six of the many non-enforcement years, or more than ten million dollars a year. This is a measure of the discrimination suffered by the residential renters of Gaithersburg, and of their deprivation of equal administration and enforcement of the County rent Act.

On October 16, 1980, Petitioners filed a similar complaint in the Circuit Court for Montgomery County, on the same eighty-eight violations of the Landlord-Tenant Relations Act, and for the same relief.

The City of Gaithersburg filed a motion to intervene for a judicial determination whether the Act applied in Gaithersburg.

All of the governmental powers of Gaithersburg are by its charter vested in a five member legislative council and a mayor. Authority for intervention in this case, however, belongs jointly to these officials and the voters of the corporation. The procedure for obtaining the authority of the voters is specified in sections 11, 12 and [illegible] of the charter, pages 2, 3 and 26, and consist of a proposal to the Council for such authority, a public hearing, publication of the proposed action, and a majority vote for or against the proposal by the Council and the voters. There was no compliance with this procedure, and no vote of the Council or the voters of the City.

Respondent Housing Management Company filed a demurrer to the complaint on the ground that "Montgomery County Government did not intend to include the incorporated City of Gaithersburg in the Rent Control legislation". In the demurrer it declared the policy, purpose and intention of Gaithersburg to be that "Gaithersburg chooses to do nothing" about excessive rents; "Gaithersburg desires not to enact its own law: it merely desires to maintain the status quo and not have rent control within its jurisdiction." (R. #5, p. 2)*

Housing Management Company has unlawfully caused the executive agents, employees and members of the government of the City of Gaithersburg, to deprive the government, the Council, thepeople and the residential renters of the City, of their fair, independent, faithful and unbiased services, judgment, decisions and action relative to the enforce-

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*The Record consists of pleadings and related documents which have been numbered chronologically by the Clerk of the Circuit Court in a list at the front of the Court Record. References in this Petition are to those numbers.

ment of the County landlord-tenant relations Act in Gaithersburg, by causing them to surrender and submit the business and affairs of the City relative to that Act, to the conflicting and detrimental domination, control and decision of Housing Management Company; by causing the City to intervene as a defendant in this case and arbitrarily to align itself in every respect with Housing Management Company against the Act; by causing the Council of the City not to exercise its right and duty to obtain a vote of the people of the City relative to its intervention; and by preventing the voters of the City from exercising their charter right to vote relative to the intervention.

The intervention of Gaithersburg and its cooperation with Housing Management Company to defend for the past and continue for the future, the non-enforcement in Gaithersburg of the landlord-tenant relations Act, was plainly contrary to the interest of its fifteen thousand residential renters. Non-enforcement cost these renters (more than

fifty percent of the voters) approximately ten million dollars a year in unlawful increases. Had they not secretly and unlawfully by-passed and prevented from voting on intervention and cooperation with the landlords, they would have rejected it. The intervention likewise was contrary to the interest of the large number of retail commodity and services businesses of Gaithersburg, which were deprived to that extent of the patronage of the renters.

At the close of argument on January 6, 1980, the Circuit Judge sustained the demurrer without leave to amend. (R. #10; Appendix, p The stated reason was because "the City of Gaithersburg has the authority to impose rent control if it wishes to". The full decisional statement is as follows:

> Mr. Hardy, you have an interesting and in some respects to me at least an appealing argument. I am not an advocate of extension of powers of municipalities including the County or the City or anything else. I am very much in the minority in that view, because the Court of Appeals has let counties and municipalities run pretty much as they wish, and I suspect that if this issue ever went to the Court of Appeals, they would

hold without much question that the City of Gaithersburg has the authority to impose rent control if it wishes to, and the mere fact that they don't set it out in those very words in view of the other provisions in the charter, would not prevent them constitutionally from exercising the authority to impose rent control.

So, on that basis, I would have to sustain the demurrer . . . (Appendix, pp. 3,4)

By this decision the Circuit Judge rejected the so-called not denied powers of section 71-19 (47) of the charter of Gaithersburg as authority for rent control, tendered by Respondent Housing Management Company, and makes another supposed power the basis of his decision. The decision is based on no known rule of law, equity, justice or reason. The "wish" is not a lawful legislative power. It is a rule of absolute lawless unconstitutional charter legislative power.

The judgment of the Circuit Court was unanimously affirmed by the Court of Appeals of Maryland on May 7, 1982 (Hardy v. Housing Management Co., 293 Md. 395, 444 A. 2d 459; Appendix, p. 5), in the statement that "the grant of authority in § 71-19 (47) of the Gaithersburg Charter encompasses the power to

enact rent control provisions similar to those enacted by Montgomery County."

The section is repugnant to the Constitution of Maryland. In 1954, as part of the new home rule system, in Article XI-A and E, the Constitution repealed and abolished the jurisdiction of the General Assembly relating to municipal corporations. Of this, the Court of Appeals said in Forest Heights v. Frank, decided October 7, 1981 (291 Md. 331, 435 A 2d 425):

> Subsequent to a county's organization under Art. XI-A, the General Assembly no longer has the constitutional authority to enact public laws for the county on any subject covered by the express powers granted to home rule counties.

In a dissenting opinion in the same case, the Court said:

> It was, of course, the purpose of the Municipal Home Rule Amendment to permit municipalities to govern themselves . . . To this end, Section 1 of Art. XI-E prohibits the General Assembly from passing any public law relating to an incorporated municipality.

Section 71-19 (47), with the so-called not denied powers for which it reached into the Constitution and statutes, was adopted for

the Gaithersburg charter in 1970, sixteen years before the ratification of Article XI-A and E. Insofar, therefore, as the Constitution and statutes contained any not denied powers, they were legal nullities from the beginning.

The Court of Appeals approved the section wholly on the authority of a statement in the year 1911 edition of Dillon on Municipal Corporations, that --

> such a general grant is permissible, and that while it "does not enlarge or annul the power conferred by the special provisions in relation to their various subject matters, (it) gives authority to pass by-laws, reasonable in their character, upon all other matters within the scope of their municipal authority, and not repugnant to the Constitution and genal laws of the State.

Dillon's language applied to section 71-19 (47) means merely that the section does not add any substantive power to the other forty-six sections of the Gaithersburg charter, but grants authority only to pass laws not repugnant to the Constitution and statutes. By-laws are secondary, subordinate or supplementary to major powers. The Court of Appeals has

erroneously decided, however, that the section is a substantive and independent power, ranking with the county power for the Landlord-Tenant Relations Act, and sufficient to oust that Act from enforcement in Gaithersburg.

The question in this case was not decided in County Council v. Investors Funding, 270 Md. 403, 312 A 2d 225, as intimated by the Court of Appeals in this case, that --

> In light of this Court's decision in County Council v. Investors Funding . . . the grant of authority in § 71-19 (47) of the Gaithersburg Charter encompasses the power to enact rent control provisions similar to those enacted by Montgomery County.

In that case no question of the legislative jurisdiction of the incorporated towns, or of Gaithersburg, or of the relationship of the jurisdictions of the counties and the towns, was raised, involved, necessary or noticed by the Court. It decided that the County "had the basis authority under its Home Rule Charter to enact local legislation regulatory of the apartment rental business and landlord-tenant relationships and ac-

tivities within the County" (p. 230) without exception

That case was decided on December 4, 1973. On October 7, 1981, in the Forest Heights Case, supra, the Court said: "This Court has not heretofore addressed the issue of a county council's power to enact laws effective within the incorporated municipalities of that county."

A brief amicus was filed by The Maryland Municipal League, representing 134 of the 152 Maryland incorporated municipalities, organized for the purpose of "strong political action". In its motion it requested leave to urge that the judgment of the Circuit Court be reversed. The motion was then amended to request that the judgment be sustained, because of alleged "typographical errors" in the original. Its brief makes no reference to section 71-19 (47) of the Gaithersburg charter, or to the question in, or the merits of, this case.

STAGE QUESTIONS WERE RAISED

The questions sought to be reviewed by Petitioners were raised in the proceedings before the Executive Director and Commission, by the follwoing statements in letters of November 24, 1979, and May 12, 1980, the only permissible method of communicating with them:

> The effect of this erroneous assumption (that the rent law does not apply to Gaithersburg) has been greviously detrimental, in that theCounty rent law has not been obeyed and made effective in Gaithersburg; that the approximately 14,000 or more residential renters of that community, including the complainants, have thereby been deprived of the equal benefit and protection of the law; and that landlords, including Housing Management Company, have been inequitably and illegally enriched. (R. #16)

> . . . the opinion has inexcusably disregarded, ignored and omitted any use, consideration and effect of a controlling Constitutional provision . . . (R. #16)

The questions were passed upon by refusals and denials to consider them.

The question of the constitutionality of the decision of the Circuit Judge that Gaithersburg had rent relations law power if it wishes, and the question of deprivation

of constitutional equal protection and due process of law, were raised in the brief of Petitioners in the Court of Appeals, in the oral argument, and in their motion for reconsideration. The questions were passed upon by the Court by ignoring them.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioners submit that the reasons why the questions are substantial and require consideration, with briefs and oral argument, is that unless this Court accepts jurisdic tion and reverses the judgment of the Court of Appeals, the legislative jurisdiction of the Montgomery County Government for protection of all of its residential renters from rent inflation, will be permanently terminated as to Gaithersburg and the other incorporated places in the county, in accordance with the judgment of the Court of Appeals; that the legislative jurisdiction of the other twenty-three counties of the State will be similarly terminated, in accordance with the judgment; that the equal protection of the Landlord-Tenant Relations Act for the residen-

tial renters and the people of Gaithersburg will be permanently terminated, in accordance with that judgment; that the rule that Gaithersburg and all of the incorporated communities of the State have charter power for the enactment of any they wish, will become a permanent and pernicious rule of law, in accordance with that judgment; that the rule that Gaithersburg and the other communities have all charter powers on any subject that is not denied to them by the Constitution of Maryland, the statutes of the General Assembly, and their own charters, will become a similar rule of law; and that the Circuit Court and the Court of Appeals have completely departed from constitutional and lawful judicial process in originating and sanctioning as rules of law the legislative wish power and not denied power.

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